

such officer, but also, to the best of their ability, on all legal matters which any such officer may refer to them concerning any Government business of any kind or in any department, whether such department be under the Supreme or Local Government.

### RULES FOR THE INSTITUTION AND DEFENCE OF SUITS.

The following rules for the guidance of all Officers in connection with the Institution and Defence of Suits and other Civil Proceedings in the Mofussil, in which Government, or any Officer of Government is a party, or in which Government have any interest, are issued in supersession of all existing Rules or Orders on the same subject. These rules do not apply to the Province of Sind :—

#### I.—*Institution of Suits on behalf of Government.*

\*Notn. No. 6452 C., B. G. G., 1878, Pt. I., pp. 751 to 765.

× Any officer wishing to institute a suit shall submit a clear and detailed report, through the ordinary channel of communication, to the Head of his department, showing—

(a) the circumstances which render the suit necessary ;

(b) the exact nature of the claim for which it is to be brought ;

(c) the steps, if any, which have been taken to obtain satisfaction of the claim without bringing a suit ;

(d) what objection or excuse, if any, the defendant has urged against the claim ;

(e) the evidence, both oral and documentary, which it is proposed to adduce in support of the claim ; and

(f) the evidence which, so far as is known, the defendant will be able to adduce in his defence.

All documents relied upon, and all the correspondence and written proceedings, whether in English or in the vernacular, connected with the proposed suit, should accompany the report.

2. It should be stated in the report whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that execution will be obtained of any decree that may be given against him.

The probability of the recovery of a sum at least equal to the costs should be ascertained before recommending the institution of any suit, unless, for reasons which should be explained, it is considered that the suit should be brought, notwithstanding that the recovery of costs is doubtful.

3. The head of the department, if he thinks that all the necessary preliminary steps have been taken, and that there is *prima facie* sufficient cause for the institution of a suit on behalf of Government, shall refer

\* The Sind Rules are, with the verbal modifications, noted in the foot-notes identical with those for the rest of the Presidency and were published by Notn. No. 6849, B. G. G., 1882, Pt. I., pp. 951 to 961.

the report with his opinion to the Remembrancer of Legal Affairs.

4. The Remembrancer of Legal Affairs will then thoroughly inform himself of the whole of the circumstances, calling for such further information, or additional papers as he thinks necessary, and report his opinion to Government in detail as to the advisability of instituting a suit.

Legal Remembrancer's duty on receipt of report.

The report of the officer who proposed the institution of the suit and the opinion of the head of the department should accompany the report of the Remembrancer of Legal Affairs to Government; but the rest of the papers should be retained by the Remembrancer of Legal Affairs pending the orders of Government, unless for any reason he deems it necessary that any of them should be laid before Government.

5. The report of the officer who proposed the institution of the suit and all other documents accompanying the report of the Remembrancer of Legal Affairs to Government will be returned to him with the order of Government for record in his office.

Papers to be recorded in the Legal Remembrancer's office.

6. If the institution of the suit be sanctioned, a draft of the plaint will be prepared by the Government Pleader of the district in which the suit is to be instituted, in consultation with the officer who proposed its institution, and will be submitted by him direct to the Remembrancer of Legal Affairs for approval.

Preparation of plaint.

## II.—Defence of Suits.

7. Section 424 of the Civil Procedure Code requires that suits against Government or Government officers should be preceded by a notice\* to be left either with a Secretary to Government, or with the officer concerned. When a notice of this kind is received by a Secretary to Government it will be at once forwarded to the officer principally concerned in, or cognizant of the matter respecting which an action is threatened.

Notices of actions how to be dealt with.

The officer receiving any such notice, whether from a Secretary to Government, or direct from the complainant, should give it immediate and careful attention. The complainant should be desired, when his complaint is vague in the statement of the alleged right or alleged infringement of this right, or of the officer whose acts are impugned, to set these points forth succinctly and clearly, as the most effectual means towards obtaining such relief as may properly be given. Should it prove impossible to

\* N.B.—A notice printed in a newspaper containing other matter does not satisfy the requirements of section 424, C. P. C. (See B. H. C. P. J., 1881, p. 286.)

A public officer is entitled to notice only in those cases in which he is sued for damages for some wrong committed by him in the discharge of his duty. (I. L. R., 7 C., 499.) But all suits against the Secretary of State in Council require a notice.

obtain a lucid and definite statement of the complainant's case in this way he should be examined orally as to all important points, and his answers should be taken down in writing, and verified by his signature, or by a memorandum that the paper was read over to the complainant and assented to by him. The documents above referred to should in every case be carefully preserved, together with any that the complainant may produce in support of his claim or complaint.

8. The conduct or act complained of may have been either (1) wholly indefensible, (2) justifiable or (3) of a mixed or doubtful character.

Examination of the grounds of complaint.

In every case the officer receiving the notice should endeavour, without prejudice, to determine to which of these classes it is to be assigned.

If it is indefensible, it is his duty to do what lies in his power to give immediate redress, or to obtain it by a full report to the proper authorities.

If the complaint is plainly groundless or if the threatened action is one which must undoubtedly be defended, if it is brought, no further notice need be taken of the complaint, but the officer concerned should at once proceed, as far as possible, to collect the information and papers which will be afterwards required under Rules 11 and 12.

The chief difficulty arises in the third class of cases; and in these the officer receiving the notice should use every possible effort to distinguish between acts which have been properly done in the discharge of a public duty and those in which, through carelessness, ignorance, or imprudence, some real cause for complaint has been given. Such analysis will, in the majority of cases, reduce these acts under one of the two heads already considered, and they should then be dealt with accordingly. Where there is a doubt as to the real intention of the Government or of a superior authority in any order, the carrying out of which has occasioned the complaint, that doubt should be cleared up by an immediate reference. When there is a doubt as to the legality of the act complained of, though in apparent fulfilment of a rule or order, issued by a superior authority, a clear statement of the case should be submitted for orders to be issued after the opinion of the law officers shall, if necessary, have been obtained.

Pending references in cases falling under either the first and third head, the complainant should be informed that some delay is requisite for the proper disposal of his complaint, and, when instructions have been received, he should be at once informed of what is to be done; but every endeavour should be made to have the matter disposed of within the period of two months from the delivery of the notice allowed by the Civil Procedure Code before the threatened action can be instituted.

9. When a suit has been instituted, if it is against Government and the summons

Preliminary steps when summons is served on Government Pleader.

is therefore served on the Government Pleader, he shall at once procure an *uncertified* copy

of the plaint and forward it and the copy of the summons received by him (with the date of its receipt by him noted on the back) to the officer who himself, or by his subordinates, is alleged to have given rise to the plaintiff's cause of action.

If the plaint relates to the acts of two or more officers, the Government Pleader shall communicate as above with the principal of such officers.

10. If, owing to the suit being against an officer in his official capacity, the Preliminary steps when summons is served on an officer personally. summons is served on that officer personally, he shall *at once* forward a *vakālatnāma* to the Government Pleader (unless the Government Pleader already holds a general power-of-attorney from him), and procure from him an *uncertified* copy of the plaint.

11. The officer to whom the Government Pleader refers under Rule 9, and any Officer concerned to collect information. officer who is sued in his official capacity, and who desires that Government should undertake the defence of the suit, shall collect, with the least practicable delay, all the information regarding the facts of the case which he can procure.

12. He is then, within one month from the date of his being first apprized of the institution of the suit, to Papers to be submitted to Head of Department. submit the following papers, through the ordinary channel of communication, to the head of his department (namely):—

(a) a copy of the plaint in the vernacular ;

(b) a translation of the same into English in half margin, the more important of the statements therein being distinctly marked with letters (a), (b), &c., and notes being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inaccurate : (when the requisite explanation cannot be thus compressed, reference should be made to the para. of the accompanying statement in which the matter should be fully discussed) ;

(c) a full and detailed statement (1) of the circumstances which led to the suit, (2) of the course which it is proposed to adopt, namely, whether to admit, compromise, or defend the suit, and of the reasons for the same, and (3) if it is proposed to defend the suit, of the grounds on which it is proposed to base the defence, and of the evidence to be adduced ;

(d) if the case turns on documentary evidence, copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence ;

(e) all the correspondence and written proceedings, whether in English or in the vernacular, connected with the subject-matter of the suit.

The forwarding report should state distinctly (1) the number of the suit, (2) the date on which, and

the Court in which, it was instituted, (3) the names of all the parties, (4) the amount or value of the claim, (5) the date fixed by the Court for the first hearing, and (6) whether notice of the action has been given under section 424 of the Civil Procedure Code, and if so, the date of delivery of such notice.

13. If the suit is against an officer in his official capacity he shall instruct the Government Pleader to move the Court, from time to time, to grant an extension of the time for hearing the claim, under section 423 of the Civil Procedure Code, until the orders of Government are received. In the case of suits against Government, the Government Pleader shall make the necessary applications to the Court for time, under section 420 of the Code, without express instructions. If in any instance the Court is likely to decline to grant further time, it is the duty of the Government Pleader to inform the officer concerned in the defence of the suit, and in emergent cases, the Remembrancer of Legal Affairs.

14. If two or more officers belonging to different departments are sued conjointly, or if the plaint in a suit against Government relates to the acts of two or more such officers, they should, with the least possible delay, communicate one with the other, and after, if possible, mutual consultation with a view to a common line of defence, arrange for the preparation of a joint report. When a joint report is not sent, a separate report should be submitted simultaneously by each officer, care being taken by the officer principally concerned that all the requirements of Rule 12 are complied with.

15. The provisions of Rules 3, 4 and 5 relating to the institution of suits on behalf of Government shall apply, *mutatis mutandis*, to reports submitted under Rule 12.

16. If the defence of a suit against Government is sanctioned, or if Government undertakes the defence of a suit against an officer in his official capacity, the written statement to be filed in answer to the plaint shall be subscribed and verified by the Government Pleader whose duty it is, under sections 420 and 426 of the Civil Procedure Code, to "answer to the plaint," and in the case of a suit of the latter class the Government Resolution sanctioning the defence is to be deemed to be the Government Pleader's "authority to appear and answer the plaint," and he shall at once on receipt thereof move the Court to cause a note of his authority to be entered in the register, but shall not produce such Resolution in Court.

17. The written statement and the issues sought on behalf of Government are ordinarily to be in strict ac-

cordance with the opinion of the Remembrancer of Legal Affairs so far as concurred in by Government; but the Government Pleader is responsible in communication with the officer concerned in the suit, for the correctness and exhaustiveness of the details of the defence.

### III.—*Conduct of Suits.*

18. The responsibility for the conduct of a suit in accordance with the opinion of the Remembrancer of Legal Affairs, so far as concurred in by Government, shall rest with the Government Pleader unless special counsel is appointed on behalf of Government; and it is the duty of the Government Pleader, during the progress of the suit, to consult the Remembrancer of Legal Affairs on all matters connected with it as to which he experiences any difficulty or doubt, and especially in respect of any interlocutory order made by the Court, on any application of the opposite party, which seems to require particular instructions.

If special counsel is appointed, it is the duty of the Government Pleader, subject to the orders of the Remembrancer of Legal Affairs, to instruct him, and, when necessary, to prepare his brief, and generally to aid him in the conduct of the case.

19. In cases connected with the departments under the control of the Collector and Magistrate of the district, it is his duty, or that of any subordinate whom he may specially depute for the purpose, and in cases connected with any other department, it is the duty of the officer who proposed the institution, or who sought the sanction of Government for the defence, of the suit (as the case may be), to ascertain that the Government Pleader, or special counsel, is thoroughly acquainted with the facts of the case, and with the evidence to be adduced in support of the claim, and to see that the necessary evidence, whether oral or documentary, is ready by the proper time. The Government Pleader must keep the Collector, or other officer, informed on all points on which his co-operation is necessary, and report, with the least possible delay, if any further evidence, or information, is required, moving the Court, if necessary, from time to time to postpone the case, or adjourn the hearing.

20. When a suit is under trial, some intelligent officer thoroughly conversant with the facts of the case should be deputed to be present to instruct the Government Pleader as to the truth concerning matters which arise unexpectedly, and to direct his attention to the documents, or other evidence, that may become important, at each stage of the trial. In important cases, and in every case in which special

counsel is retained, an Assistant or Deputy Collector, or an officer of similar rank should be deputed for this purpose.

21. Should there be a difference of opinion between the Government Pleader or special counsel and the Collector or other officer at whose desire the suit has been instituted or defended, as to the manner of conducting the case, or should the opinion of the Remembrancer of Legal Affairs prove unintelligible on any point, or open to objection, the Remembrancer of Legal Affairs shall at once be communicated with in order that the difficulty may be settled. Should there eventually be an irreconcilable difference of opinion between the Collector or other officer and the Remembrancer of Legal Affairs, a reference shall forthwith be made by the latter to Government.

22. The following important points relating to the conduct of all suits should be carefully attended to by Government Pleaders and all officers concerned (namely) :—

(a) the averments in a plaint, or in a written statement, should generally be based in every material point on the proof which can be adduced in support of them ;

(b) the evidence, whether oral or documentary, on which it is intended to rely should be carefully scrutinized by the Government Pleader *before* it is adduced, and he should advise as to its admissibility, and probable importance, or unimportance, for the purposes of the suit, and suggest what evidence, if it be forthcoming, may with advantage be substituted for that which, in his opinion, would be weak or inadmissible ;

(c) all the available evidence should be assiduously collected and made ready for the day fixed for its reception, and the necessity of making applications for adjournment should, as much as possible, be avoided, and such applications on behalf of the opposite party should, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation, and to give opportunities for the fabrication of false evidence ;

(d) all documentary evidence should be ready and be produced at the first hearing of the suit, (*i.e.* the day fixed for the settlement of issues), as required by section 131 of the Civil Procedure Code, and when a suit is instituted, the documents sued upon should be produced in Court when the plaint is presented, together with copies thereof, as required by sections 59 and 62 of the Code, and the list of other documents relied upon as evidence, which is required by section 59 to be annexed to the plaint should be very carefully prepared. Applications to the Court to accept any document in evidence, at any subsequent stage of the trial, should, unless under special circumstances, be avoided, as such applications cannot be granted without the

grant of similar indulgence to the opposite party, which may place Government at a disadvantage, and should be resisted, as holding out a temptation to forgery ;

(e) documents filed by the opposite party should be carefully examined at the earliest opportunity, and compared with originals in the Government records, or with other papers which tend to establish, or subvert, their authenticity ;

(f) the *production* of documents in the possession of Government or of any Government officer when lawfully required by the Court, or by the opposite party, should not be resisted unless for good and sufficient reasons such as are recognized by law ; but the question of the *admissibility* of the documents, when produced, should be carefully considered, and argued, it being borne in mind that the opinions of individual officers contained in official correspondence (which is so often called for by persons engaged in litigation with Government in order to establish their case) are, as a rule, not admissible in evidence ;

(g) the object of Government in sanctioning either the institution, or defence, of any suit is simply to establish the truth ; and whilst Government expect the utmost vigilance and care on the part of those entrusted with the conduct of litigation on their behalf in asserting and protecting their just interests, they would impress upon pleaders who have the charge of cases that they will not countenance any attempt to snatch an unfair advantage by the withholding of important evidence, or by any disingenuous proceeding whatever.

23. As soon as a suit is decided, the Government Pleader shall communicate the nature of the decision to the Collector, or other officer concerned, giving, in important or interesting cases, a brief statement of the grounds thereof. A duplicate of the Government Pleader's report shall be at once forwarded by him direct to the Remembrancer of Legal Affairs.

24. The Government Pleader shall then obtain with as little delay as possible two copies, one certified and the other uncertified, of the Court's judgment, and one certified copy of its decree. The certified copies of the judgment and decree he shall forward to the Collector or other officer concerned ; the uncertified copy of the judgment he shall forward to the Remembrancer of Legal Affairs direct.

25. If the decision is entirely in favour of Government, the copies may be forwarded by the Government Pleader according to the last rule without comment, and the Collector or other officer shall communicate the result of the suit to the head of his department, sending him a copy of the judgment, or not, as,

Procedure when decision is entirely in favour of Government.



under the circumstances of the case, he thinks fit. The result need not be communicated by the head of the department to Government unless he is of opinion that for special reasons it is desirable to do so, in which case he shall submit his report to Government through the Remembrancer of Legal Affairs.

The general results of all litigation will be communicated to Government by the Remembrancer of Legal Affairs in his annual report.

#### IV.—*Appeals.*

26. If the decision is either wholly or partially adverse to Government the Government Pleader, when forwarding copies of the decree and judgment to the Collector or other officer concerned, shall state his opinion, with reasons, as to whether an appeal should be brought.

27. The Collector or other officer, after perusing the judgment, shall call upon the Government Pleader to send him uncertified copies of such of the exhibits recorded in the case as he deems necessary to explain the grounds of the decision so far as it deals with the merits of the case (or in important cases, of *all* the material exhibits), and shall forward them, together with the certified copies of the judgment and decree already received from the Government Pleader, with a report, stating his opinion as to whether the decision should be acquiesced in or appealed against, direct to the Remembrancer of Legal Affairs.

28. This report must be despatched so as to reach the Remembrancer of Legal Affairs within *fifteen days* after the date of the decree, in cases in which an appeal lies to the District Judge, and within *one month* after the said date in cases in which an appeal lies to the High Court.\*

29. A copy of the report shall be sent simultaneously to the head of the department, who, if he concurs in it, will merely file it, but if he differs from it, or considers it otherwise necessary to address Government on the subject of it, shall submit a separate report on it without delay to Government through the Remembrancer of Legal Affairs.

30. The Remembrancer of Legal Affairs, after calling for such further information, or additional papers, as he thinks necessary, shall report his opinion to Government as to whether an appeal should be made or not, or as to what other course should be pursued. His report must be despatched in time to enable the orders of Government upon it to be acted upon, if

\* In Rules 28, 32, 37 (2), 41, 42, 43, 44, 45, 47, 48, 49 & 71, of the Sind Rules, substitute "Sadar Court" for the words "High Court."

necessary, within the period prescribed by law for filing an appeal.

The report of the Collector or other officer, and, if any have been received, that of the head of the department also, should accompany the report of the Remembrancer of Legal Affairs to Government; but the rest of the papers should be retained by the Remembrancer of Legal Affairs, pending the orders of Government, unless for any reason he deems it necessary that any of them should be laid before Government.

31. The report of the Collector, or other officer, and of the head of the department, if any, and all other documents which accompany the report of the Remembrancer of Legal Affairs to Government, will be returned to him with the order of Government for record in his office.

Papers to be recorded in the Legal Remembrancer's Office.

32. If an appeal be sanctioned the Collector, or other officer, will instruct the Government Pleader in the District Court, or in the High Court,\* accordingly, at the same time sending him a *vakalatnama* (unless the Government Pleader already holds a general power-of-attorney from him), if the suit is against him personally. If the appeal has to be made to the District Judge, the Remembrancer of Legal Affairs will return the copies received by him, under Rule 27, to the Collector, or other officer, who shall make them over to the Government Pleader for his use in the appeal. If the appeal has to be made to the High Court, the said copies shall be sent by the Remembrancer of Legal Affairs direct to the Government Pleader in that Court, and it shall be the duty of the Collector, or other officer, in consultation with the District Government Pleader, to send to the Government Pleader in the High Court,\* with the least practicable delay, copies of all the remaining material exhibits and other papers connected with the suits for his information and guidance.

33. Appeals are ordinarily to be based strictly on the grounds recommended by the Remembrancer of Legal Affairs and concurred in by Government; but when an appeal is sanctioned generally against a decision, the Government Pleader is responsible for availing himself of all legitimate grounds on which the decree may be open to objection, notwithstanding that any of them may have escaped the notice of the Remembrancer of Legal Affairs, or not have been mentioned by him.

In important or intricate cases the memorandum of appeal should be submitted to the Remembrancer of Legal Affairs for approval before being filed in Court.

\* *Vide* note to rule 28.

34. If an appeal is brought by the opposite party against a decision either entirely, or partly, in favour of Government, a notice of the appeal will be served by the Court either on the Government Pleader or on the officer concerned. In the former case the Government Pleader shall at once obtain an *uncertified* copy of the memorandum of appeal, and forward it and the notice received by him (with the date of its receipt noted on the back) to the Collector or other officer concerned, or to the principal of the officers concerned. In the latter case the officer concerned shall at once send the Government Pleader a *vakalatnāma* (unless the Government Pleader already holds a general power-of-attorney from him), and obtain from him an *uncertified* copy of the memorandum of appeal.

35. The Collector or other officer concerned shall then carefully compare the grounds of appeal with the Court's judgment, and after consultation, if necessary, with the District Government Pleader, report his opinion as to whether the appeal should be defended, and make any explanation or remarks that may be needed with reference to the grounds of appeal. His report should be submitted to the head of his department and be accompanied by the same documents as are required to accompany a report under Rule 27.

36. The Head of the Department shall refer the report, with his own opinion, to the Remembrancer of Legal Affairs, and the provisions of Rules 30, 31 and 32 shall then apply, *mutatis mutandis*, to the said report and its accompaniments, and to the Remembrancer of Legal Affairs with regard to his duty in respect thereof, and to the instruction of the Government Pleader, if the defence of the appeal is sanctioned by Government.

37. The provisions of Rules 18, 19, 20 and 21 apply equally to the conduct of appeals as to the conduct of original suits except—

(1) that a discretion must be exercised by the Government Pleader in meeting new points raised for the first time in appeal, but that he should apply for an adjournment to enable him to advise with the officer concerned, or with the Remembrancer of Legal Affairs, if necessary, on any such points in which he may not have been fully instructed, or to which he is not able to furnish an immediate reply;

(2) that it is only necessary to depute an officer to be present to assist the Government Pleader in the High Court \* when express orders are received from Government to that effect.

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\* *Vide* note to rule 28.

38. When two or more officers of different departments are concerned in a case in which an appeal is desired on behalf of Government, or in which an appeal is brought by the opposite party, the foregoing duties will devolve on the principal of such officers, subject, as far as may be, to the provisions of Rule 14.

39. When an appeal has been decided by a District Court, the provisions of the Rules 23, 24 and 25 shall be observed so far as they are applicable, just as in the case of the decision of an original suit.

Procedure when two or more officers are concerned in an appeal case.

Applicability of Rules 23, 24 and 25 to decisions in appeals.

#### V.—Second Appeals.

40. When an appeal from an original decree has been decided by a District Court, either wholly or partially adversely to Government, the same course is to be pursued with respect to the bringing of a second appeal as in the case of an appeal from an original decree, provided that if the Remembrancer of Legal Affairs is clearly of opinion that the case is one in which the law allows no second appeal, it shall not be necessary for him to refer it for the orders of Government, and the result of the first appeal need not be communicated to Government unless the head of the department, or the Remembrancer of Legal Affairs, is of opinion, for special reasons, that it should be. If the head of the department communicates the result of an appeal to Government under this rule, he shall submit his report to Government through the Remembrancer of Legal Affairs.

Procedure when an appeal has been decided adversely by a District Court.

Procedure when a second appeal is brought against an appellate decree either wholly or partly in favour of Government, the same course shall be pursued as when an appeal is brought in the High Court\* against a similar original decree.

41. When a second appeal is brought against an appellate decree either wholly or partly in favour of Government, the same course shall be pursued as when an appeal is brought in the High Court\* against a similar original decree.

Procedure when a second appeal is brought against an appellate decree in favour of Government.

42. When an appeal has been decided by the High Court,\* whether against an original or appellate decree, the Government Pleader shall communicate the nature of the decision, as soon as it is pronounced, to the Remembrancer of Legal Affairs, giving a brief statement of the grounds of the decision.

(Notn. No. 2895, B. G. G., 1893, p. 425.)

High Court's decision in an appeal how to be reported.

He shall then obtain, with as little delay as possible, two *uncertified* printed copies of the Court's written judgment, if any, and forward one to the Remembrancer of Legal Affairs, and one, with the papers in the case, to the Collector or other officer

\* Vide note to Rule 28.

concerned. \* If the Court records no written judgment, the Government Pleader shall inform the Collector or other officer to that effect and return the papers. The Collector, or other officer, shall inform the head of his department of the result of the case, sending him a copy of the written judgment, if any, or not, as he deems necessary.

The Remembrancer of Legal Affairs shall communicate the result of any such appeal to Government only when he thinks necessary, in special cases submitting a copy of the written judgment also, if any have been recorded; but, as a general rule, he should confine himself to mentioning the different cases and their results in his annual report. Nor need the result of any such appeal be communicated to Government by the head of the department unless the decision appears to him to be specially inconvenient, or to affect the administration in some unusual manner, in which case he shall forward his report to Government through the Remembrancer of Legal Affairs.

#### VI.—*Appeals to Her Majesty in Council.*

43. Applications under Chapter XLV of the Civil Procedure Code for permission to appeal to Her Majesty in Council, whether in behalf of or against Government, shall be dealt with generally under the same rules as are applicable to appeals to the High Court.†

‡44. When the High Court† has granted a certificate that a case is a fit one for such appeal, the Government Pleader in that Court shall take steps for selecting the exhibits to be included in the transcript of the record in accordance with No. 6 of the rules published by the High Court on the 23rd February 1870 (*vide B. G. G.* for 1870, p. 167) referring for instructions in all matters of doubt to the Remembrancer of Legal Affairs.

45. When the High Court† has declared the appeal admitted under Section. 603 of the Civil Procedure Code, the Government Pleader shall at once inform the Remembrancer of Legal Affairs, and, so far as permitted by the rules of the Court, shall give his careful attention to the preparation of the transcript of the record and see that it contains copies of all the documents necessary on behalf of Government, and that it is conveniently arranged and indexed.

46. On receipt of intimation that an appeal has been declared admitted, the Remembrancer of Legal Affairs shall prepare a statement—

\* The Sind Rules omit in No. 42 the words "If the Court records," to "return the papers."

† *Vide* note to rule 28.

‡ In the Sind Rules omit in No. 44 the words from "in accordance with" to "p. 167."

(1) embodying the facts of the case,

(2) explaining the reasons on which further prosecution of the suit is recommended,

(3) setting out the principal points insisted upon for the Government in the Courts of this country, and

(4) adding such observations upon the past conduct of the case and upon the judgments of the Courts in this country as will conduce to an understanding and proper representation of the Government case at the hearing of the appeal.

47. If the Advocate General has appeared in the case before the High Court \*

Statement to be submitted to the Advocate General for his revision.

on behalf of Government, the above statement shall be signed by him as well as by the Remembrancer of Legal Affairs and shall contain their joint opinion as to the precise legal grounds on which the appeal should be argued. If the Advocate General has not appeared in the case, the Remembrancer of Legal Affairs shall forward the statement to the Solicitor to Government, who will submit it to the Advocate General for his opinion as to the soundness of the arguments relied upon for Government and for his advice generally.

48. The said statement, together with the opinion

Statement to be printed.

of the Advocate General, if it is recorded separately, shall then be printed under the superintendence of the Solicitor to Government so as to be ready by the same time that the transcript of the record is likely to be transmitted by the High Court\* to the Privy Council. The Government Pleader shall keep the Remembrancer of Legal Affairs and the Solicitor to Government informed as to when the transcript will probably be transmitted.

49. As soon as the Government Pleader has

Duty of Government Pleader when transcript record has been transmitted to the Privy Council.

ascertained that the transcript of the record has been transmitted by the High Court\* to the Privy Council, he shall inform the Solicitor to Government and at the same time forward to him twenty-two printed copies of the transcript record, if the same is printed in India, under the provisions of Section 602 of the Civil Procedure Code.

50. The Solicitor to Government shall then with-

Solicitor to Government to submit papers to Government for transmission to England.

out delay submit twenty printed copies of the transcript and of the statement (printed in accordance with Rule 48) to Government, namely, ten for the records of Government and ten for transmission to the Secretary of State with a view to the Solicitors of the India Office being duly instructed. He shall also send one printed copy of the transcript and one of the statements to the Remembrancer of Legal Affairs for his records.

\* Vide note to rule 28.

51. If the transcript of the record is not printed in India, the Government Pleader shall apply, through the Remembrancer of Legal Affairs, for the instructions of Government as to the number of the authenticated manuscript copies to be prepared in lieu of printed copies, for the purposes of the last two rules.

*VII.—Execution of Decrees.*

52. Whenever it has been determined not any further to contest a decision which is either wholly or partly adverse to Government, the Collector, or other officer concerned, shall at once instruct the Government Pleader to pay into the Court, whose duty it is to execute the decree, all moneys payable under the decree, care being taken that the decree is fully satisfied within the time fixed for its satisfaction under section 429 of the Civil Procedure Code.

53. Immediately on a decree being given in favour of Government, the Collector, or other officer concerned, is to proceed, in consultation with the Government Pleader, to take steps for the recovery of costs and of the amount, if any, decreed, unless for special reasons (which he should report through the head of his department to the Remembrancer of Legal Affairs for the orders of Government) he deems it undesirable that any such step should be taken, or that they should be taken immediately.

54. If any appeal is instituted, and the execution of the decree is stayed by order of the Court, the interval before the decision of the appeal should be made use of in making inquiries as to the property of the judgment-debtor.

55. When the officer concerned is not the Collector, or a subordinate of the Collector, he may apply to the Collector to assist him in prosecuting the necessary inquiries as to the property of the judgment-debtor.

56. The provisions of section 545 of the Civil Procedure Code are ordinarily sufficient to prevent any fraudulent disposal of property by the judgment-debtor during the time gained by an appeal; but the Government Pleader, in communication with the Collector, or other officer concerned, shall see that the security taken by the Court is sufficient, petitioning the Court, if he considers that the security offered is not valid, or sufficient, to be allowed to execute the decree at once.

57. If such application is refused, the Collector, or other officer, should endeavour to keep a watch on the property of the debtor, so as to prevent any fraudulent alienation or concealment of it.

58. District Government Pleaders shall send to the Remembrancer of Legal Affairs, on the 1st January, 1st April, 1st July, and 1st October, through the Collector, a quarterly return, in the following form, showing the progress made in realizing amounts due under decrees to Government in the districts to which they are respectively appointed :—

Name of Court, and Number and Year of Suit.	PARTIES' NAMES.		AMOUNT TO BE REALIZED.			AMOUNT REALIZED.			Balance yet to be recovered.	RE-MARKS.
	Plaintiff.	Defendant.	Amount of Claim decreed.	Amount of Costs decreed.	Total.	Previously.	During the Quarter under report.	Total.		

In the column of remarks, any reasons for delay, or for want of progress in the recovery of dues, should be fully explained ; and when any sums are considered to be absolutely irrecoverable, the Collector, or other officer, shall report the amount to the Remembrancer of Legal Affairs, who shall submit the same to Government for orders. If Government direct any such sum to be written off as irrecoverable, it need no longer be shown by the Government Pleader in his quarterly return.

(Notn. No. 7088, B. G. G., 1886, p. 1020.)

59. Should the Remembrancer of Legal Affairs consider the progress made in the recovery of moneys due to Government under decrees unsatisfactory, he shall bring the matter to the notice of Government.

60. Any sum due to Government under a decree may, if convenient, be recovered otherwise than through the agency of the Courts ; but the Government Pleader should be instructed, under section 258 of the Civil Procedure Code, to certify every such recovery to the Court.

Whenever any money is recovered on behalf of Government in execution of a decree, the Government Pleader shall pay the amount into the treasury to the credit of the department concerned, and intimate the fact to the Head of the Department.

(Notn. No. 5631, B. G. G., 1887, p. 821.)

61. The practice of deputing Government servants to bid on behalf of Government at Court's auctions with a view of purchasing the property of judgment-debtors by whom money is due to Government is, generally speaking, objectionable, as it is likely to involve Government in much litigation of a doubtful character, and it should never be resorted to, unless with the special sanction of Government, to be obtained through the Remembrancer of Legal Affairs.

Purchase of judgment-debtor's property for Government forbidden.



## VIII.—Suits by Paupers.

62. Notices of the day fixed by any Court under section 408 of the Civil Procedure Code for receiving evidence as to an applicant's alleged pauperism, and applications under section 414 of the Code for dispaupering a plaintiff, should be respectively received and made by the District Government Pleaders in the case of any Court situated at his head-quarters, and by the Subordinate Government Pleader appointed for the Court in the case of any other Court.

63. Government Pleaders need not busy themselves about calling evidence in *every* case in which a notice is served upon them under section 408. But on receipt of any such notice they should at once communicate with the \* Mámlatdár or Mahálkari of the táluka or mahál in which the applicant resides.

If such officer, after inquiry, informs him that the applicant is a pauper within the meaning of section 401 of the Code, he need take no further steps in the matter. But if such officer considers that the applicant is not a pauper, he should collect such evidence as he is able in disproof of his alleged pauperism, and instruct the Government Pleader, who will then appear on the day fixed for the hearing, and oppose the application under section 409.

Applications to dispauper a plaintiff under section 414 will be made by a Government Pleader only under express instructions; but it is the duty of Government Pleaders to communicate to the Mámlatdár or Mahálkari any fact which at any time comes to their knowledge which appears to render it desirable that such an application should be made.

## IX.—Miscellaneous.

(Notn. No. 6381, B. G. G., 1879, Pt. I., p. 856.)

63A. As soon as a Government Pleader receives from the Court a copy of a decree directing payment of pauper costs, he shall enter the particulars thereof in a Register which he shall keep for this purpose in the following form :—

Consecutive No. of entry.	Date of receipt of Decree from Court.	Name of Court which passed the Decree.	No. and year of Suit or Appeal.	Names of parties.	Substance of orders as to payment of pauper costs.	Pauper costs recoverable.	
						Parties liable.	Amount
1	2	3	4	5	6	7	8

\* In No. 63 the Sind Rules read "Mukhtiyárkar" for "Mámlatdár or Mahálkari" and omit the word "mahál."

RECOVERIES.			WRITTEN OFF AS IRRECOVER- ABLE.		Total of Columns 11 and 13.	REMARKS.
How recovered.	Date.	Amount.	No. and date of Govern- ment Resolution.	Amount.		
9	10	11	12	13	14	15

63B. If the party liable to the payment of any such costs or his Pleader is known to the Government Pleader and is readily accessible to him, he shall endeavour to recover the amount due from him at once, and forward the copy of the decree with a report of his proceedings to the Collector.

If the amount due, or any portion of it, cannot be thus recovered, the Government Pleader shall, without delay, forward the copy of the decree to the Mámlatdár of the taluka in which the person liable for the amount due has his residence.

63C. On receipt of a copy of a decree under the last Rule the Mámlatdár shall make inquiries as to the property and means of the person liable, and, if possible, obtain from him the amount due, or such portion thereof as he is able to pay.

If the Mámlatdár obtains any payment either at this, or at any subsequent time, he shall inform the Government Pleader of the amount thereof.

63D. If the Mámlatdár is unable to obtain any payment from the person liable for the same, or obtains only a portion of the whole amount due, he shall forward the copy of the decree together with all the information he is able to procure as to the property of the said person, and as to the probability of his being able to pay what is due by him, either at once or at any time thereafter within the period of limitation, to the Collector for orders.

63E. The Collector shall, thereupon, in consultation, if necessary, with the Government Pleader, issue such orders as to the making of an application in Court for the recovery of the amount due, or otherwise, as he thinks fit.

If it shall appear altogether improbable that the person liable will be able to pay what is due by him under the decree, or the balance of what is so due by him within the period of limitation, or if for any reason the Collector shall think it inexpedient that such person should be further pressed, he may at once apply to Government under Rule 58 for sanc-

tion to write off the amount still due, but as a general rule steps for the recovery of pauper costs should be unremittingly continued until the period of limitation expires when, if necessary, application should be made by the Collector as aforesaid under Rule 58.

63F. If the decree under which pauper costs are recoverable awards to the person liable for the same any money, or other property, the Government Pleader shall carefully watch the execution of such decree and at the proper time enforce the prior right of Government in respect of any such money or other property.

It shall also be the duty of the Government Pleader at all times to furnish the Collector or Mámlatdár with any information which comes to his knowledge, the possession of which is likely to facilitate the recovery of the monies due to Government, and when the period of limitation for the execution of any decree is nearly expiring without such decree having been fully satisfied, he shall specially report the fact to the Collector.

63G. When Government sanction the writing off of any pauper costs as irrecoverable the particulars of the Resolution shall be communicated by the Collector to the Government Pleader.

The Government Pleader shall make the requisite entries in columns 9—13 of the Register kept by him under Rule 63A from time to time as he himself recovers, or obtains information of the recovery, or writing off of the pauper costs due in respect of each decree entered in the Register.

The Quarterly Return forwarded to the Remembrancer of Legal Affairs by District Government Pleaders under Rule 58 shall show separately the progress made in realizing amounts due to Government under decrees on account of pauper costs and in realizing amounts so due on any other account, and to enable the District Government Pleaders to make complete returns, each Subordinate Government Pleader shall submit to the District Government Pleader to whom he is subordinate a return in the same form and on the same dates as are prescribed in Rule 58 for the returns to be prepared by the latter.

\* 64. Copies of documents on the Government records are often applied for as a means of supporting a claim either before or after the commencement of a suit against Government. Such copies should be furnished when the documents are of a public character and are pertinent to the case for which they are required

\* In Sind Rules Nos. 64 to 73 are given under the heading "IX.—Miscellaneous."

Copies of confidential communications, as those between Government and an officer or between one officer and another dealing with particular transactions or the rights or duties of individuals, should not in general be given. Vague and fishing applications for copies should be rejected. In cases of doubt the proper criterion to apply is that of whether, if a copy is refused, the original may properly be called for by the Court, or whether such a call may properly be resisted according to the principles of sections 123 and 124 of the Indian Evidence Act. When there is a right to inspect, it must be borne in mind that section 76 of the same Act gives a right to a copy. Every copy taken, or its original, should be carefully considered by the Government Pleader, for whose perusal it will be submitted by the officer making the copy.

65. When documents in the charge of a head of a department are called for by a Court, he should consider whether they include communications made in official confidence, the production of which will be injurious to the public interest. To the production of such documents he should object, as falling within the principles of section 124 of the Indian Evidence Act, and he will be careful to prevent his subordinates transgressing this rule upon summons directed to them personally, instead of to himself, in whom the custody of the documents is vested, and without whose orders subordinates are not at liberty to remove or otherwise deal with the documents of the department.

66. If it appears advisable to a Collector, or other officer, to intervene in any suit to which Government have not been made a party, or, if he shall deem it necessary to institute, or shall be called upon to defend, any miscellaneous civil proceeding on behalf of Government, the rules prescribed for regular suits in all their stages shall, *mutatis mutandis*, be deemed applicable, provided that in cases of emergency the Collector or other officer may act in anticipation of the order of Government, but shall at once report his proceedings through the channel prescribed by the said rules.

67. Cases which are referred to the Civil Court under section 15 of the Land Acquisition Act X of 1870 need not, as a general rule, be referred under the foregoing rules to Government, through the Remembrancer of Legal Affairs for orders, but the Remembrancer of Legal Affairs may be consulted direct on any points that may arise in respect of such cases involving legal doubts or difficulties.

68. No suit, or other civil proceeding, is to be settled out of Court or compromised in Court, by any officer of Government, without the express orders of Government to be obtained through the Remembrancer of Legal Affairs, after submitting full explanation of the course proposed to be adopted.

69. All correspondence and all Resolutions of Government on the subject of suits, or other civil proceedings are to be regarded, by all officers of Government and by all pleaders into whose hands they may come, as *strictly confidential*. No public officer shall grant copies of any such correspondence or Government Resolution during the pendency of the suit or civil proceeding, or until after its final decision by the highest Court before which it is likely to be brought, for any reason whatever, and no such copies shall be granted at any time after such final decision without the previous sanction of the head of the department.

Correspondence and Government Resolutions to be deemed strictly confidential.

70. The Remembrancer of Legal Affairs is to keep in his office complete records of all the correspondence connected with every suit or other civil proceeding in which Government, or any Government officer, is concerned. Rules 5, 15, 31 and 36 have been framed with a view of facilitating this purpose, and where the rules do not expressly make provision to that effect, it is to be understood that all original correspondence on the subject of such suits or proceedings is eventually to be returned to the Remembrancer of Legal Affairs for record.

Legal records. Remembrancer's

71. Collectors and other officers, who are frequently concerned in suits, or other civil proceedings, should furnish the Government Pleader in the High Court,\* and the Government Pleader of the district in which such suits, or other proceedings, originate, with a general power of attorney.†

General powers of attorney.

72. When the exhibits in an original suit, or other proceeding, are so numerous or so important as to necessitate a District Government Pleader's obtaining copies thereof for his own use, or for that of special counsel, and whenever a District Government Pleader for any reason whatever obtains copies of any such exhibit, he shall take care to have them legibly written on one side only of the paper, with a quarter margin (the paper being of the ordinary foolscap size in use in official correspondence), so that they may be afterwards used by counsel and others (as, for instance, for the purposes of Rules 27 and 35) in every subsequent stage of the case, and the expense of procuring fresh copies from time to time may be thus avoided.

Copies of papers.

It should be borne in mind that correct uncertified copies (which need not bear any Court-fee Stamp) are for all purposes, except for filing in Court, as good and as useful as certified stamped copies, and copies of the latter kind should, therefore, only be

\* Vide note to rule 28.

† A form of general power of attorney under section 37 of the Code of Civil Procedure is given at page 178 of the High Court's Circular Order Book.

obtained when they are required for filing in Court or when these rules expressly state that certified copies should be procured.

\* In cases from the Kánarese Districts, Maráthi or English translations must accompany all copies of Kánarese exhibits intended for the use of the Remembrancer of Legal Affairs or of the Government Pleader in the High Court.

† 73. District Government Pleaders shall send a return to the Remembrancer of Legal Affairs on the first of every month in the following form. When there are no cases to be entered in the return it shall nevertheless be sent in blank:—

*Return of Original Suits, Appeals and other Civil Proceedings, instituted in the District of*  
*during the ‡ month of* 189 , *in which Government or any Government Officer is concerned.*

Court in which instituted.	Nature of Case (i.e. whether an original suit, appeal, or other civil proceeding).	No. of Cases.	Date of Institution.	PARTIES.		Date fixed for the hearing.
				Plaintiff, Appellant, or Petitioner.	Defendant, Respondent, or Opponent.	

(Signed) A.B.,  
 Government Pleader.

\* For the last paragraph of No. 72, the Sind Rules, substitute the following:—

“English translation must be sent of all vernacular papers intended for the use of Government or of the Remembrancer of Legal Affairs.”

† In No. 73 for the words “on the 1st of every month” the Sind Rules, substitute “on the 1st of January and the 1st of July.”

‡ After the words “during the month of,” the Sind Rules, substitute “six months ending.”

## APPENDIX.

## ACCOUNTS.

1. Government Pleaders will draw their salaries, and their fees for criminal cases, and any special fees which may from time to time be sanctioned by the Remembrancer of Legal Affairs or by Government, on submitting bills in the usual form to the proper Treasury Officer.

2. To enable them to meet the minor charges incident to the institution and conduct of the cases, whether civil or criminal, with which they are entrusted, the Government Pleader in the High\* Court shall be allowed a permanent advance of Rs. 500, and such of the District and Subordinate Government Pleaders as the Remembrancer of Legal Affairs authorizes to receive the same, shall be allowed each a permanent advance not exceeding Rs. 200. Only those Government Pleaders who have usually a large number of Government cases on hand shall be authorized by the Remembrancer of Legal Affairs to receive this advance.

3. Government Pleaders are to defray all the charges connected with each case as they arise, and to submit a bill for the same (and for their own fees in civil cases), as soon as possible, after each case has been decided, to the Collector or other officer concerned in the case.

But when, as in the case of the court-fee chargeable on an appeal in which the claim is for a large amount, a Government Pleader has to pay considerable sums out of pocket at once, he may submit separate bills for such sums immediately, provided that the amount of any such bill shall not, in the case of the Government Pleader in the High Court, be less than Rs. 50, and of other Government Pleaders, Rs. 35.

A bill of charges submitted under the first para. of this rule shall include the whole of the charges on account of the case for which it is submitted and any sums which may have been already drawn on account of the case under para. 2 of this rule shall be shown at the end of the bill and deducted.

4. Every bill submitted by a Government Pleader under the last rule is to be forwarded by him through the Remembrancer of Legal Affairs and must be accompanied by vouchers, or by a copy of the Court's decree in support of every item contained in it.

The Remembrancer of Legal Affairs shall, if he passes the bill, countersign and forward it to the officer by whom it is to be paid. The Remembrancer of Legal Affairs is responsible for curtailing unnecessary, or exorbitant charges, and generally for controlling all expenditure incurred by Government Pleaders.

† 5. Postal and other general contingent charges may be drawn by the Government Pleader in the High Court on bills countersigned by the Remembrancer of Legal Affairs according to the rules in force for payment at the Presidency.

‡ 6. The Judges of the Courts to which District and Subordinate Government Pleaders are respectively attached are authorized to cause their letters and packets to be franked as if they issued from their own offices, and also to pay any bearing charges on official covers which they may receive. The Government Pleaders shall be responsible that such letters, packets, and covers are *bond fide* despatched, or received, on Her Imperial Majesty's service only. District and Subordinate Government Pleaders shall not incur any contingent expenses apart from the necessary charges connected with the cases which they have to conduct.

\* In the appendix to the Sind Rules the words "Sadar Court" are throughout substituted for "High Court."

† No. 5 is omitted in the appendix to the Sind Rules.

‡ In No. 6, the Sind Rules, omit the words "District and Subordinate" before the words "Government Pleaders."